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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,054	07/06/2000	Tom Gray	481340010023	5057
7590	02/23/2005		EXAMINER	
David B Cochran Jones Day Reavis & Pogue North Point 901 Lakeside Avenue Cleveland, OH 44114			KARMIS, STEFANOS	
			ART UNIT	PAPER NUMBER
			3624	
DATE MAILED: 02/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

JE

**Advisory Action**  
**Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/611,054	<b>Applicant(s)</b> GRAY ET AL.
<b>Examiner</b> Stefano Karmis	<b>Art Unit</b> 3624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

THE REPLY FILED 11 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires 3 months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.
13.  Other: \_\_\_\_\_.

Regarding independent claim 1, Applicant contests that the prior art of Kirkby et al. (U.S. 6,498,786) fails to teach "endowing one or more bidding entities with an adjustably fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources." The Examiner respectfully disagrees. Kirkby teaches that a network includes a number of users always prepared to pay premium rates to secure resources and customer loyalty may be applied to ensure that loyal bidders who outbid other users gain the resources required for transmitting traffic (column 11, lines 1-12). Therefore, Kirkby does teach providing any amount of resource to an entity if the entity has enough importance.

In the case where bandwidth is less than desired, a user can determine how much more is necessary to bid and if the amount is above a user defined limit, the user may reduce his bid to zero and wait (column 10, lines 41-45). In essence, the user is a failing entity because the bid level is higher than the user is willing to pay and consequently the higher bidders receive their desired bandwidth while the current user's transmission fails until either prices come to an acceptable range or the user increases his willingness to pay. Therefore the user is allowed to fail while others are maintained on the limited bandwidth.

Therefore Applicant's arguments are not persuasive and claim 1 remains rejected as previously stated. Claim 2-18 are dependent upon claim 1, and are rejected based upon dependency. Claim 19 discloses similar limitations as claim 1 and as a result is rejected in a similar manner. Claims 20-36 are dependent upon claim 19 and remain rejected based upon dependency as previously stated.



HANI M. KAZIMI  
PRIMARY EXAMINER